

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Newport News Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 4:02cr-28
)	
MARIO ANTHONY TYNES)	
a/k/a "Rio")	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, and Janet S. Reincke, Assistant United States Attorney, and the defendant, MARIO ANTHONY TYNES, a/k/a "Rio," and the defendant's counsel, Jeremy C. Kamens, Esq., pursuant to Rule 11(e) of the Federal Rules of Criminal Procedure, have entered into the following agreement:

1. The defendant, MARIO ANTHONY TYNES, a/k/a "Rio," agrees to plead guilty to Counts Four and Five of the indictment. Count Four charges him with distributing approximately 11.8 grams of a mixture and substance containing a detectable amount of cocaine base, a/k/a "crack," a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(B). The penalty for this offense is a mandatory minimum term of five years imprisonment, a maximum term of 40 years imprisonment, a fine of \$2,000,000, a special assessment, and at least four years supervised release. Count Five charges him with

using and carrying and possessing a firearm, to wit: a semi-automatic pistol, during and in relation to and in the furtherance of a drug trafficking crime, in violation of Title 18, United States Code, Section 924(c)(1). The penalty for this offense is a minimum mandatory term of seven years imprisonment pursuant to Title 18, United States Code, Section 924(c)(1)(A)(ii), a fine of \$250,000, a special assessment, and not more than 3 years supervised release. The defendant also understands that this seven-year term of imprisonment shall be consecutive to any other term of imprisonment to which defendant is sentenced on Count Four. The defendant is aware that the supervised release terms are in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

The defendant is also aware this case is governed by 18 U.S.C. §§ 3143(a) and 3145(c). These provisions provide that a judicial officer shall order that a person who has pled guilty to an offense of this kind be detained unless there are exceptional reasons why such person's detention would not be appropriate.

2. Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00)

per count of conviction, pursuant to Title 18, United States Code, Section 3013.

3. The defendant agrees: (a) that any monetary penalty that the Court imposes, including the special assessment, fine, costs or restitution, is due and payable immediately; (b) to submit a completed Financial Statement of Debtor form as requested by the United States Attorney's Office; and (c) to make no attempt to avoid or delay paying any monetary penalty through any bankruptcy proceeding.

4. The defendant is aware that the defendant's sentence will be imposed in accordance with the *Sentencing Guidelines and Policy Statements*. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense(s) to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence. The defendant is also aware that any estimate of the probable sentencing range under the sentencing guidelines that the defendant may have received from the defendant's counsel, the United States, or the probation office, is a prediction, not a promise, and is not binding on the United States, the probation office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive,

and the defendant cannot withdraw a guilty plea based upon the actual sentence. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute(s) of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742, or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

5. The United States will not further criminally prosecute defendant in the Eastern District of Virginia for the specific conduct described in the indictment, except for crimes of violence related to, but not specifically set out in, the indictment. Except where specifically noted, this plea agreement binds only the United States Attorney's Office for the Eastern District of Virginia and the defendant; it does not bind any other prosecutor in any other jurisdiction.

6. The defendant represents to the Court that defendant is satisfied that defendant's attorney has rendered effective

assistance.

7. The United States agrees that it will not file an information pursuant to Title 21, United States Code, Section 851(a)(1), seeking to enhance the defendant's minimum mandatory sentence due to a previous felony drug conviction. This agreement does not apply to or affect any potential sentencing enhancements which may be imposed under the sentencing guidelines.

8. The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity. In that regard:

a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.

b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.

c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d. The defendant agrees to voluntarily submit to a government polygraph examination.

e. Nothing in this agreement places any obligation on

the government to seek the defendant's cooperation or assistance.

9. a. The United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other criminal prosecution against the defendant in the Eastern District of Virginia. Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested.

b. Nothing in this plea agreement restricts the Court's or Probation Office's access to information and records in the possession of the United States. Further, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony.

c. It is further understood that this agreement is limited to the United States Attorney's Office for the Eastern District of Virginia and cannot bind other federal, state or local prosecuting authorities, although this office will bring the cooperation of the defendant to the attention of those authorities,

if requested. However, no statements of the defendant provided pursuant to this agreement will be utilized for prosecution of the defendant provided the defendant complies with this agreement. The defendant agrees to testify on behalf of other prosecuting offices or agencies if the said offices grant him the appropriate immunity for his testimony.

10. The parties agree that the United States reserves its option to seek any departure from the applicable sentencing guidelines, including any departure below the mandatory minimum, pursuant to Section 5K of the *Sentencing Guidelines and Policy Statements* and Title 18, United States Code, Section § 3553(e), or Rule 35(b) of the Federal Rules of Criminal Procedure, if in its sole discretion, the United States determines that the defendant has provided substantial assistance and that such assistance has been completed and such a departure is appropriate.

11. If the defendant fails in any way to fulfill completely all of the obligations under this plea agreement, the United States may seek release from any or all its obligations under this plea agreement.

12. If the defendant fails to fulfill the obligations under this plea agreement, the defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal

Rules of Evidence, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, or any other federal rule, that defendant's statements pursuant to this agreement or any leads derived therefrom, should be suppressed or are inadmissible.

13. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the United States' decision whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the *Sentencing Guidelines and Policy Statements*. The defendant agrees that the decision whether to file such a motion rests in the United States' sole discretion.

14. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading

guilty freely and voluntarily because the defendant is guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

15. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending indictment. Further, I fully understand all rights with respect to the provisions of the *Sentencing Guidelines and Policy Statements* which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

Date: _____

MARIO ANTHONY TYNES
Defendant

16. Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment. Further, I have reviewed the provisions of the *Sentencing Guidelines and Policy Statements* and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's

decision to enter into this agreement is an informed and voluntary one.

Date: _____

Jeremy C. Kamens
Counsel for Defendant

PAUL J. MCNULTY
UNITED STATES ATTORNEY

By: _____

Janet S. Reincke
Assistant United States Attorney
VA Bar No. 33677
8000 World Trade Center
101 W. Main St.
Norfolk, VA 23510
757/441-6331

APPROVED:

Fernando Groene
Criminal Supervisor

Date: _____

PLEAGREE.POST
Revision 5.4 (7/98)

**U. S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Account**

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIM. ACTION NO.:	4:02cr-28
DEFENDANT'S NAME:	MARIO ANTHONY TYNES
PAY THIS AMOUNT:	\$200.00

INSTRUCTIONS:

- 1. MAKE CHECK OR MONEY ORDER PAYABLE TO:
*CLERK, U.S. DISTRICT COURT***
- 2. PAYMENT MUST REACH THE CLERK'S OFFICE BEFORE YOUR SENTENCING DATE**
- 3. PAYMENT SHOULD BE SENT TO:**

Clerk, U.S. District Court
101 25th St.
Newport News, VA 23607 (Do not Send Cash)

OR HAND DELIVERED TO:

Clerk's Office
101 25th St.
Newport News, VA 23607 (Mon - Fri 9 - 4)
- 4. INCLUDE DEFENDANT'S NAME ON CHECK OR MONEY ORDER**
- 5. ENCLOSE THIS COUPON TO INSURE PROPER and PROMPT APPLICATION OF PAYMENT**